

**FILED NOVEMBER 3, 2011**

**STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES**

In the Matter of	)	Case No. <b>11-PM-16377-DFM (S190165)</b>
	)	
<b>PATRICIA MADDEN CULLEN,</b>	)	<b>ORDER GRANTING MOTION TO</b>
	)	<b>REVOKE PROBATION AND FOR</b>
<b>Member No. 202477,</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>
<u>A Member of the State Bar.</u>	)	

**INTRODUCTION**

The Office of Probation, represented by Terrie Goldade, filed a motion pursuant to Business and Professions Code section 6093, subdivisions (b) and (c),<sup>1</sup> and rules 5.310 et seq. of the Rules of Procedure of the State Bar<sup>2</sup> to revoke the probation of Respondent Patricia Madden Cullen (Respondent). Respondent did not participate in this proceeding although she was properly served with the motion by certified mail, return receipt requested, and by regular mail at her State Bar membership records address; and by regular mail at an alternate address in Tehachapi.<sup>3</sup>

For the reasons stated below, the court finds that Respondent willfully failed to comply with the terms of her probation. (Section 6093, subd. (c).) As a result, the court grants the

---

<sup>1</sup>Future references to section(s) are to this source.

<sup>2</sup>Future references to rule(s) are to this source.

<sup>3</sup> The court notes that Respondent was also served at her membership records address with a notice of assignment on September 15, 2011, and with a submission order on October 13, 2011. None of the correspondence the court sent to Respondent was returned as undeliverable.

motion of the Office of Probation to revoke Respondent's probation and its request to involuntarily enroll her as an inactive member of the State Bar pursuant to section 6007, subdivision (d). The court recommends that Respondent's probation be revoked, that the previously-ordered stay of suspension be lifted, that Respondent be actually suspended from the practice of law for one year; that Respondent be placed on stayed suspension for one year and on probation for two years, with conditions as set forth below.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

#### **Jurisdiction**

Respondent was admitted to the practice of law in California on September 13, 1999, and has been a member of the State Bar at all times since.

#### **Probation Violations**

On December 7, 2010, the State Bar Court filed an order approving the stipulation of the parties in State Bar Court case Nos. 08-O-14040 (08-0-14051; 08-0-14569; 09-O-11446; 09-0-14129)) and recommending discipline consisting of one year's stayed suspension and two years' probation, among other things. On April 13, 2011, the California Supreme Court filed an order, S190165, accepting the State Bar Court's discipline recommendation and ordering Respondent to comply, inter alia, with the following conditions of probation:

- (a) During the period of probation, Respondent was required to submit a written report to the Office of Probation on January 10, April 10, July 10 and October 10 of each year, or part thereof, during which the probation is in effect, stating under penalty of perjury that she has complied with provisions of the State Bar Act and Rules of Professional Conduct during said period (quarterly report); and

(b) Make restitution as follows:

1. To Jose Rodriguez-Melendez in the amount of \$3,910 plus 10 percent interest per year from October 17, 2007 (or reimburse the Client Security Fund to the extent of any payment from the fund to Jose Rodriguez-Melendez). She was also ordered to make a minimum quarterly payment of \$500 and to furnish satisfactory proof to the State Bar's Office of Probation with each quarterly report;
2. To Jorge Chavez in the amount of \$4,000 plus 10 percent interest per year from May 1, 2008 (or reimburse the Client Security Fund to the extent of any payment from the fund to Jorge Chavez). She was also ordered to make a minimum quarterly payment of \$500 and to furnish satisfactory proof to the State Bar's Office of Probation with each quarterly report; and
3. To Jamie Favela in the amount of \$1,500 plus 10 percent interest per year from October 3, 2008 (or reimburse the Client Security Fund to the extent of any payment from the fund to Jamie Favela). She was also ordered to make a minimum quarterly payment of \$250 and to furnish satisfactory proof to the State Bar's Office of Probation with each quarterly report.

The Supreme Court order became effective on May 13, 2011, 30 days after it was entered. (Cal. Rules of Court, rule 9.18(a).) It was properly served on Respondent.<sup>4</sup>

On May 12, 2011, the Office of Probation wrote a letter to Respondent, properly sent to him at her official address, reminding her of certain terms and conditions of the probation

---

<sup>4</sup>Although no proof was offered that the Clerk of the Supreme Court served the Court's order upon Respondent, rule 8.532(a) of the California Rules of Court requires clerks of reviewing courts to immediately transmit a copy of all decisions of those courts to the parties upon filing. It is presumed pursuant to Evidence Code section 664 that official duties have been regularly performed. (*In Re Linda D.* (1970) 3 Cal.App.3d 567, 571.) Therefore, in the absence of evidence to the contrary, this court finds that the Clerk of the Supreme Court performed his duty and transmitted a copy of the Supreme Court's order to Respondent immediately after its filing.

imposed pursuant to the Supreme Court's order and enclosing, among other things, copies of the Supreme Court's order, the probation conditions portion of the stipulation, instruction sheets and forms to use in submitting quarterly reports, and scheduling and enrollment information for Ethics School.

On June 15, 2011, Respondent met with a deputy of the Office of Probation to discuss the probation conditions and deadlines.

On July 7, 2011, Respondent left two voicemails for the Office of Probation indicating she had some questions. In one of the messages, she stated that would not have proof of restitution with this quarterly report. She was wondering if she should just resign.

During a July 7, 2011, conversation with the Office of Probation's deputy, Respondent noted that she had checks made out to the complaining witnesses but she would not be able to provide proof of restitution with the July 10 quarterly report and did not know if she had their addresses. She was thinking of resigning because she would be late. The deputy told her that she could be provided with the complaining witnesses' last known addresses. She could send the restitution and provide the proof as soon as possible and noted that a referral for late submission would be highly unlikely at that time due to the volume of work. The deputy also confirmed Respondent's email address.

On July 8, 2011, the Office of Probation sent Respondent an email setting forth the names and addresses of the complaining witnesses to whom Respondent was to make restitution.

On July 13, 2011, the Office of Probation sent Respondent an email correcting the name and address of one of the complaining witnesses that had been incorrectly set forth in the July 8 email.

On July 13, 2011, the Office of Probation left a message with "Kim" at Respondent's office to call back as soon as possible regarding an incorrect address. Later that same day, the Office of Probation left a voicemail for Respondent stating that an email had been sent to her and the caller was making sure she had received the messages. Respondent was asked to call back.

Respondent has not answered the telephone calls or email.

On August 5, 2011, the Office of Probation sent a reminder letter to Respondent at her official address, attaching copies of the May 12, 2011 letter and July 8 and 13, 2011 e-mail.

On August 31, 2011, the Office of Probation received a letter from Respondent stating that she wished to resign from the State Bar of California.

On September 2, 2011, the Office of Probation mailed Respondent a resignation packet to her home address and to her office address, each with a cover letter stating that her letter was insufficient for resignation and that she should review the enclosed forms and information carefully to determine whether she still wished to resign. As of September 13, 2011, the Office of Probation had not received any further communication from Respondent.

Respondent did not comply with each of the conditions of probation as set forth above. She has failed to file her first quarterly report due July 10, 2011, and to submit proof of each quarterly restitution payment with each quarterly report.

Therefore, because Respondent willfully violated her probation conditions ordered by the Supreme Court in case No. S190165, the revocation of her probation is warranted.

### **Aggravating Circumstances**

#### **Prior Discipline**

In aggravation, Respondent has one prior record of discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(b)(i).)<sup>5</sup> In S190165, Respondent and the State Bar stipulated to culpability, in five client matters, of violations of Rules of Professional Conduct, rules 3-110(A) (two counts), 3-700(A)(2) (two counts) and 3-700(D)(2) (three counts) as well as section 6068, subdivision (m) (three counts). There were no aggravating factors. The mitigating circumstances were family and medical problems and candor and cooperation.

#### **Indifference**

Respondent's failure to comply with the probation conditions, after being reminded by Office of Probation, demonstrates indifference toward rectification of or atonement for the

---

<sup>5</sup> All further references to standard(s) are to this source.

consequences of her misconduct. (Std. 1.2(b)(v).) In addition, she has failed to participate in the instant proceeding, a source of considerable concern to this court.

### **Mitigating Circumstances**

It is Respondent's burden to establish mitigating factors, but she did not participate in this proceeding. Accordingly, no mitigating factors are found.

### **DISCUSSION**

Section 6093 authorizes the revocation of probation for a violation of a probation condition, and standard 1.7 requires that the court recommend a greater discipline in this matter than that imposed in the underlying disciplinary proceeding, but any actual suspension cannot exceed the period of stayed suspension imposed in the underlying proceeding. (Rules Proc. of State Bar, rule 5.312.) The extent of the discipline to recommend is dependent, in part, on the seriousness of the probation violation and the respondent's recognition of the misconduct and the member's efforts to comply with the conditions. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.)

The court agrees with the Office of Probation's request that Respondent be actually suspended for the full amount of stayed suspension. Respondent was aware of the terms and conditions of her disciplinary probation, yet failed to comply with them despite reminders from Office of Probation. She has also failed to participate in this consequential disciplinary proceeding.

The court does not agree with the Office of Probation's request that Respondent's actual suspension continue until she makes restitution as previously ordered. If she is allowed to work after she completes the one year of actual suspension, she has the opportunity of earning the funds to pay restitution during the balance of her probationary period.

### **RECOMMENDATIONS**

#### **Suspension and Probation**

The court recommends that the probation of respondent **Patricia Madden Cullen**, Member No. 202477, previously ordered in Supreme Court case no. S190165 (State Bar Court case Nos. 08-O-14040 (08-0-14051; 08-0-14569; 09-O-11446; 09-0-14129)) be revoked; that the

previous stay of execution of the suspension be lifted; that she be suspended for one year, that execution of such suspension be stayed; and that she be placed on probation for two years on the following conditions:

1. Respondent must be actually suspended from the practice of law for the first one year of probation;

2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all the conditions of this probation;

3. Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar, 180 Howard Street, San Francisco, California, 94105-1639, and to the State Bar Office of Probation, all changes of information, including current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;

4. Respondent must submit written quarterly reports to the State Bar Office of Probation on each January 10, April 10, July 10 and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether she has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. If the first report will cover less than thirty (30) days, that report must be submitted on the next following quarter date, and cover the extended period. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the probation period and no later than the last day of the probation period;

5. Subject to the assertion of applicable privileges, Respondent must answer fully, promptly, and truthfully, any inquiries of the State Bar Office of Probation which are directed to Respondent personally or in writing, relating to whether Respondent is complying or has complied with the conditions contained herein;

6. It is recommended that during the period of probation, Respondent must make restitution as follows:
- a. To Jose Rodriguez-Melendez in the amount of \$3,910 plus 10 percent interest per year from October 17, 2007 (or reimburse the Client Security Fund to the extent of any payment from the fund to Jose Rodriguez-Melendez, in accordance with Business and Professions Code section 6140.5) and furnish satisfactory proof to the State Bar's Office of Probation in Los Angeles;
  - b. To Jorge Chavez in the amount of \$4,000 plus 10 percent interest per year from May 1, 2008 (or reimburse the Client Security Fund to the extent of any payment from the fund to Jorge Chavez, in accordance with Business and Professions Code section 6140.5) and furnish satisfactory proof to the State Bar's Office of Probation in Los Angeles; and
  - c. To Jamie Favela in the amount of \$1,500 plus 10 percent interest per year from October 3, 2008 (or reimburse the Client Security Fund to the extent of any payment from the fund to Jamie Favela, in accordance with Business and Professions Code section 6140.5) and furnish satisfactory proof to the State Bar's Office of Probation in Los Angeles.

7. Within one year after the effective date of discipline, Respondent must submit to the Office of Probation satisfactory evidence of completion of six hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney-client relations and/or general legal ethics. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses. (Rules Proc. of State Bar, rule 3201.); and

8. Within one year after the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and of the State Bar's Client Trust Accounting School and passage of the tests given at the end of those sessions. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending Ethics School or Client Trust Accounting School. (Rules Proc. of State Bar, rule 3201.)

The period of probation will commence on the effective date of the order of the Supreme

Court imposing discipline in this matter.

At the expiration of this period of probation, if Respondent has complied with all the terms of probation, the order of the Supreme Court suspending Respondent from the practice of law for one year shall be satisfied and that suspension shall be terminated.

**California Rules of Court, Rule 9.20**

It is recommended that the Supreme Court order Respondent to comply with California Rules of Court, rule 9.20(a), within 30 calendar days after the effective date of the Supreme Court order in the present proceeding and to file the affidavit provided for in rule 9.20(c) within 40 calendar days after the effective date of the order showing Respondent's compliance with said order.<sup>6</sup>

**Costs**

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

**Multistate Professional Responsibility Exam**

It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) as she was ordered to do so in Supreme Court case No. S190165 (State Bar Court case Nos. 08-O-14040 (08-0-14051; 08-0-14569; 09-O-11446; 09-0-14129))

**ORDER REGARDING INACTIVE ENROLLMENT**

It is hereby ORDERED that Respondent **Patricia Madden Cullen**, Member No. 202477, be involuntarily enrolled as an inactive member of the State Bar of California pursuant to

---

<sup>6</sup>Respondent is required to file a rule 9.20(c) affidavit even if she has no clients. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 130.)

Business and Professions Code section 6007, subdivision (d). The requirements of section 6007, subdivision (d)(1) have been met: Respondent was subject to a stayed suspension; she was found to have violated probation conditions; and it has been recommended that Respondent be actually suspended due to said violations. This enrollment will be effective three days following service of this order.

It is recommended that Respondent receive credit toward the period of actual suspension, recommended above, for the period of her inactive enrollment pursuant to this order. (Bus. & Prof. Code, § 6007, subd. (d)(3).)

It is also ordered that her inactive enrollment be terminated in the future as provided by Business and Professions Code section 6007, subdivision (d)(2).

Dated: November \_\_\_\_, 2011

---

DONALD F. MILES  
Judge of the State Bar Court